IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

CRL.A.No. 430 of 2000

SC.47/1997 OF SESSIONS COURT, THRISSUR.
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APPELLANTS/ ACCUSED NOS. 1 AND 3 TO 8:
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1. **SHAJU, S/O. MADAPATTI CHOTHI,**
   THURUTHIPARAMBU DESOM,
   ALOOR VILLAGE.

2. **RAGHU, S/O. PANDHALKOOTTAM VEETTIL KURUMBAN,**
   THURUTHIPARAMBU DESOM, ALOOR VILLAGE.

3. **PAULY, S/O. KOONAN ANTONY,**
   THURUTHIPARAMBU DESOM, ALOOR VILLAGE.

4. **SAJEEV, S/O. MANAPATTI CHOTHI,**
   THURUTHIPARAMBU DESOM, ALOOR VILLAGE.

5. **THOMAS, S/O. PARIYODATHUPARAMBIL GEORGE,**
   MOONJELI DESOM, WEST CHALAKUDY VILLAGE.

6. **SADANANDAN, S/O. ANKAROTH VELAYUDHAN,**
   MOONJELI DESOM, WEST CHALAKUDY VILLAGE.

7. **JOY, S/O. THOTTATHIL KOCHAPPAN,**
   THURUTHIPARAMBU DESOM, ALOOR VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU,
SMT.MINI JOHN PAREMALIL.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/11/2007,THE COURT ON 14/11/2007 DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 3108/2000 IN CRL.A. NO. 430/2000

DISMISSED

14/11/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

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CRL.A.NO.430 OF 2000

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DATED THIS THE 14th November 2007

JUDGMENT

The appellants are accused 1 and 3 to 8 in S.C.No.47/1997 in the Court of Sessions Judge, Thrissur and who stand convicted for the offences under Sections 143, 147, 148, 304 Part II read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of eight years and to pay a fine of R.10,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period of one year each for the offence under Section 304 Part II I.P.C. They have also been sentenced to lesser terms of imprisonment for the rest of the offences.

2. Originally the case was charge sheeted against accused 1 to 15 vide Crime No. 41/1995 of Chalakudi police station. The 2nd accused died during the pendency of the proceedings before

the court below. Accused Nos. 9 to 15 were acquitted by the trial court.

3. The prosecution case is that on 12-2-1995 at about 1 a.m. the accused on account of political enmity and with the common object of causing the death of Pathiaparambil Thomas formed themselves into an unlawful assembly committed rioting armed with deadly weapons such as sticks and accused 1 to 15 in furtherance of common object of the unlawful assembly assaulted the deceased with sticks and that he succumbed to the injuries at the spot itself. The evidence adduced in the matter consisted of the testimony of Pws.1 to 15, Exts.P1 to P15 and Mos.1 to 13.

4. Of the prosecution witnesses examined, Pws.1. to 3 are the direct witnesses to the incident, who have supported the prosecution version. Pws.6 to 9 and 12 and 13 were examined in order to prove that the deceased and accused 1 to 3 were found in the premises of the church wherein it was the festival day etc. All of them were treated as hostile. PW4 is the Forensic Surgeon who conducted the autopsy. PW5 is the Village Officer.

Pw10, 11, 14 and 15 are the police officials who registered the F.I.R., conducted the investigation and filed the charge sheet. Ext.P1 is the F.I.S., Ext.P1(a)F.I.R., Ext.P2 postmortem certificate, Ext.P3, scene plan prepared by the Village officer, Exts.P4 to P9(a) are the portions of Section 161 statement of the witnesses, i.e. Pws.6 to 9, 12 and 13 proved by the prosecution as the above witnesses turned hostile. Ext.P10 is the inquest report, Ext.P11 is the scene mahazar, Ext.P12 is the report submitted by the Circle Inspector of Police mentioniing the names and address of the accused. Ext.P13 is the property list, Ext.P14 forwarding note and Ext.P15 certificate of chemical analysis. Mos.1 to 13 are the allegedly blood stained sticks, the dress and belt of the accused and blood stained earth.

5. The core of the prosecution evidence is the testimony of Pws.1 to 3 of whom Pws.1 and 2 are the nephew of the deceased Thomas then aged 45 and PW3, the brother in law, i.e. wife's brother of the deceased. It is the version of the above witnesses that when they were returning home together along with the deceased after attending the church festival by a short cut route

through the paramba of Pathiaparambil Kochappan, the accused suddenly rushed at them from the house of one Raman (at about 47.52 metres away from the north western corner of the compound wall of the church as per Ext.P11 scene mahazar) on the back side of the house of PW7 Jose (39.66 metres north of the north eastern corner of the house of PW7 as per Ext.P11) and attacked the deceased and when the deceased attempted to escape, he was chased and beaten with cudjan sticks, bamboo sticks and arecanut palm stick and coconut palm stick by accused 1 to 8 and Pws. 1 to 3 ran away towards the southern side and they were standing on the rear side of PW7. Accused 9 to 15 spotting them and rushed at them and they ran away. They went to the house of CW4, Francis, the brother of the deceased and came back to the scene of occurrence but the deceased was not found there. The blood stained lunki of the deceased was found at the spot. There was marks of something dragged through the ground to a certain extent. It appeared to them that Thomas has been done away with. PW1 felt uneasy and was made to rest in front of a closed shop on the side of the road. Pws.2, 3 and CW4

searched the area. They asked to help of two passers-by who did not volunteer to help them. It is also stated that the accused are residents around the area. It was about 6 a.m. that they traced the body of the deceased in the thick bushes at Thuruthoor Mana paramba which is an extensive one of about 6 acres. The legs of the body were tied with the belt of the deceased. PW1 was sent by Pws.2 and 3 and CW4 to Chalakudi police station and at 6.30 a.m.Ext.P1 F.I.S.was recorded as per the version of PW.1 It was PW11, the Head Constable who recorded the F.I.S. and registered the crime vide Ext.P1 (a).

6. It has come out in evidence that Pws.1 and 2 are residents of Vattakadavu Desom in Chalakudi which is about 6 to 7 Kms. away from the place where the deceased was residing, i.e.Thuruthiparamba. Church festival was celebrated on 11-2-1995. The mother of Pws.1 and 2 hailed from Thuruthiparambu. Pws.1 and 2 came to Thuruthiparambu to attend the festival and they along with the deceased had food at their tharwad house and went to the church to see the festival along with the deceased and PW3, who is the brother in law of the deceased.

At about 12'O clock in the night the procession entered the church. Till about 12.30 A.M. all of them roamed about seeing decorations etc. in the church and thereafter Pws.1 to 3 and the deceased proceeded to the house of the deceased through the short cut through the paramba of Kochappan and when they reached near the vacant area in the paramba the accused rushed to them. Pws.1 and 2 flashed their torches. It is the version that the first accused shouted " here comes Puthiyaparambil Thomas, beat him to death". All of them attempted to escape and on looking back the accused were found hitting the deceased on the leg and head and the rest of the accused also showering blows on the deceased. Accused 9 to 16 were exhorting to beat and kill the deceased. PW1 has proved Ext.P1 F.I.S. Pws.1 to 3 have identified Mos.1 to 8 sticks, Mos.9 and 10 the blood stained lunki and shirt, MO.11, the belt of the deceased. It is the evidence of PW15, the investigating officer that Mos.1 to 8 and the lunki were found at the scene of occurrence. I find that the evidence of Pws.1 to 3 tally on material particulars. No contradictions with respect to their previous statements have

been brought out or marked.

7. It was contended by counsel for the appellants that Pws.1 and 2 are not residents of the locality and in Ext.P1 F.I.S. only the names of accused 1 and 2 have been mentioned and it is mentioned in Ext.P1 that Pw1 is not aware of the names of the rest of the accused and hence the identity has not been established. It is further alleged that PWs. 1 to 3 are close relatives of the deceased and hence their version cannot be accepted. It is also alleged that the F.I.R.has reached the court only on the next day at 2.50 p.m.although police station is very near to the court. It is also alleged that there is no proper evidence as to the existence of light at the spot so that Pws.1 to 3 could have identified the accused. I find that the court below has rejected the above contentions for reasons mentioned.

8. I find that it is the version of Pws.1 and 2, brothers who are the sister's children of the deceased that they had their schooling at Thuruthiparambu which is the place of the family house of their mother and that they knew the identity of the accused. It is also to be noted that the place of their residence

is only about 7 kilo metres away from Thuruthiparambu. Further more, PW3 is a person of the locality and there is nothing to disbelieve his version that he is very well knew the identity of the accused. Further it is the version of Pws.1 and 2 that they identified the accused except accused No.8 from at the police station. It is also to be noted that on 16-2-195, PW15 has filed the report before the court mentioning the names and address of the accused. It is the version of PW15 that he questioned Pws.1 to 3 and a number of persons on 12-2-1995 itself. Accused 1 to 5 were arrested on 15-2-1995 by PW15, accused 9 to 15 were arrested on 23-2-1995 by PW14, the Sub Inspector of Police and accused 6 and 7 were arrested on 13-2-1995 by PW15. It has also to be noted that along with the remand report of accused 1 to 5, the gist of the version of the witnesses have been incorporated. The contention that the previous statement of Pws.1 to 3 were not produced before the court at the time was rightly rejected by the court below as it is not the practice to produce Section 161 Cr.P.C. statements along with the report mentioning the names and address of the accused. I find that

the fact that only on 16-2-1995 the names and address of the accused have been submitted before the court and hence it is likely that the names of the accused have been incorporated as a result of deliberation is without merit. There is no evidence to show that the accused are prominent functionaries of the political party and also there is no evidence that Pws.1 to 3 had any ill-will against the accused so that they would have implicated the accused instead of the real assailants.

9. The contention that delay in reaching the F.I.R.before the court, i.e.on the next day indicated that Ext.P1 F.I.S. was concocted subseuqently also appeared far fetched in view of the fact that in the case of such a contingency the police could have mentioned the names of all the accused in the F.I.S. itself. The F.I.S. Contained, as already noted above, the names of accused 1 and 2 alone and further that there is a recital in Ext.P1 that the informant is not aware the names of the rest of the accused. It has also to be noted that Ext.P10 inquest was recorded by PW15 at 11 a.m.and Ext.P11 scene mahazar was prepared at 2 p.m. It was also brought out that 13-2-1995

was a holiday. In the above circumstances, I find that the finding of the court below that there is nothing to show that delay has caused prejudiced to the accused is the right one.

10. As to the existence of the light at the spot and as to how the witnesses identified the accused, the version in Ext.P1 F.I.S. is that the accused was identified in the light of the flash of torch light from the torches of Pws.2 and 3 and in the light of the electric bulb fixed on the northern side of the house of PW7 and in the moon light. PW1 when testified has stated that he identified the accused also in the light of the street light and in the light on the closed shop on the road near the place of occurrence and in the light of tube lights fitted on the bamboo poles on the side of the compound wall of the church. Further the place of occurrence as per the evidence of the witnesses is an open paramba. PW7 although hostile has admitted that there was a bulb on the north eastern corner of his house although he stated that he did not remember whether the above bulb was burning. Ext.P5 portion of the C.D. statement proved through PW15 mentioned that he had put the above light on. As already

noted in Ext.P11 the place of occurrence is 47.52 metres away form the north western corner of the compound wall of the church and 39.52 metres north of the house of PW7. As noted by the court below being an open place it is possible that there would have been sufficient brightness at the spot itself. Pws.2 and 3 have also sated that they witnessed the incident in the flash of their torches and in the twilight (Nattuvelicham) . The likelihood is that there would have been tube lights fixed near the compound wall of the church as it is usual to illuminate the area during church festival. As noted by the court below the version of Pws.1 to 3 that Pws.2 and 3 had torches with them cannot be ruled out as they have gone to witness the festival etc. and returned in the midnight.

11. The failure of PW1 to mention the names of the accused in Ext.P1 F.I.S. as explained by PW1 is on account of the fact that he was totally upset and exhausted, by he time he reached the police station. The court below has noted that he was a person of his aged about 21 years and that he witnessed the incident and the dead body of his uncle and his mental condition at the

time would not have been quite composed.

12. The recovery of Mos.1 to 8 sticks and MO.9 lunki has been testified to by PW15 and also as to the recovery of MO.10 and MO.11, the shirt and belt. Ext.P15 chemical analysis report revealed that except items 8,9, 12 and 13 the rest contained blood stains.

13. PW4, the Forensic Surgeon has proved Ext.P2 postmortem certificate as per which the body had 29 injuries and of which items 4 to 28 and 29 were fractures and item No.28 is sufficient to cause death. PW4 has testified that bleeding and neurogenic shock caused the death. PW4 has also stated that beating with Mos.1 to 8 can result in the injuries noted in Ext.P2 which are as follows:

1. Abraded contusion 9 x 3.5 x 0.5 cm over the left frontal eminence.

2. Lacerated wound 4.5 x 2.3 x bone deep over the left parietal eminence.

3. Lacerated wound 2.5 x 1.3 cm x bone deep over the back of head on the right side just below the prominence of back of head.

4. Fracture of nasal bones.

5. Abraded contusion 6 x 4 cm over the left side of prominence of face.

6. Abraded contusion 2 x 1.5 cm over the right side of prominence of face.

7. Abraded contusion 38 x 20 cm x bone deep over the back of lower part of right arm to wrist joint with 9 muscle deep lacerated wounds measuring 0.3 x 0.1 cm to 1.5 x 0.8 cm. scattered irregularly over the area.

8. Abraded contusion 4 x .25 cm x muscle deep over the outer aspect of middle of right side of abdomen.

9. Abrasion 26 x 1.7 cm over the outer aspect of upper part of right thigh.

10. Abraded contusion 15 x 8 cm x muscle deep over the lower part of back of trunk and small of back.

11. Abrasion 6 x 0.4 cm horizontal over the outer aspect of lower part of right thigh.

12. Four irregular lacerated wounds, bone deep over an area 10 x 9 cm varying in size from 2 x 1 cm to 3.5 x 3 cm around right

knee with fracture fragmentation of lower part of femur patella, tibia and fibula.

13. Lacerated wound 2 x 1.5 cm bone deep over the front of right leg just below knee.

14. Lacerated wound 4.5 x 2 cm x bone deep over the middle of right leg. The tibia and fibula were fractured and fragmented corresponding to injury number 13 and 14.

15. Two lacerated wounds 2 x 1 cm and 2.5 x 1 cm bone deep over the front of right ankle and foot (2 cm below the right ankle)

16. Abraded contusion 4 x 3 cm over the front of right foot, close to the roots of toes.

17. Abraded contusion 28 x 9 x muscle deep extending for the middle of right thigh to middle of leg.

18. Lacerated wound 1 x 0.6 cm over the outer aspect of left ankle.

19. Lacerated wound 1.5 x 0.5 cm vertical over the front of middle of left leg.

20. Lacerated wound 3 x 1.7 cm, vertical over the upper part of

front of left leg below knee.

21. Multiple irregular lacerated wounds over an area 7 x 5 x bone deep over the front of left knee varying in size from 4.5 x 2 cm to0.5 x 0.3 cm.

22. Lacerated wound 4 x 1.5 cm horizontal over the outer aspect of left knee.

23. Abraded contusion 28 x 16 cm x muscle deep around the lower 1/3rd of left thigh close to knee.

24. Abrasion 30 x 26 cm over the left half front and sides of abdomen and lower part of chest.

25. Lacerated wound 1.5 x 0.7 cm over the back of left forearm with corresponding fracture of both bone of forearm.

26. Three lacerated bone deep wounds 3.5 x 2 cm, 1 x 0.7 and 5.5 x 2 cm, all bone deep placed one above the other over the back of left elbow.

27. Contusion 10 x 7 x muscle deep over the front of lower 1/3rd of left arm.

28. Fracture fragmentation of frontal bones and anterior cranial fossa. The under surface of frontal lobes were lacerated with

subdural bleeding.

29. Fracture of IV, V and VI ribs on the left side on the mid-clavicular line and fracture of X, XI, XII costal cartilages.

14. I find that the evidence adduced do establish beyond reasonable doubt, the identity of accused 1 to 8 and that they beat up the deceased. It is the version of PW15 that the place where the body was found was about 300-400 metres away from the scene of occurrence and the legs of the body were tied with the belt of the deceased and it is the version of PW15 and Pws.1 to 3 that there was indication at the scene of occurrence that there was marks of some thing dragged through the ground to a certain extent. Evidently, the deceased was brutally attacked. I find no reason to deviate form the findings of the trial court. The conviction is confirmed.

Counsel for the appellants have sought for leniency pointing out that more than 12 years have elapsed since the date of the incident and so far the accused were facing the ordeal of criminal proceedings and living under the shadow of impending imprisonment and that their situation in life has

considerably changed and that their families are solely depending on their income for their livelihood. It is also pointed out that the sentence of imprisonment for eight years ordered by the court below is excessive and that the punishment provided for the offence under Section 304 Part II is imprisonment or fine or with both. Despite the above facts pointed out, I find that causing death cannot be taken lightly. In the circumstances and considering the long lapse of time the sentence imposed for the offence under Section 304 Part II read with Section 149 of the Indian Penal Code is modified to rigorous imprisonment for six month each and to pay a fine of Rs.1,00,000/-(Rupees one lakh) each and in default to undergo further rigorous imprisonment for one year each. The fine amounts, if realised, shall be paid to the widow of the deceased. The appeal is disposed of accordingly.

Sd/-
K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 430 OF 2000

JUDGMENT

14-11-2007